Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

COMMENTS OF

TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

CONSUMER FEDERATION OF AMERICA

CONSUMERS UNION

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CONSUMER COMMENTERS

The Texas Office of Public Utility Counsel (OPUC) is an independent state agency created in 1983 to represent the interests of residential and small commercial customers on telephone and electricity matters before the Public Utility Commission of Texas, other state and federal regulatory agencies, and before federal and state courts.

Consumers Union (CU) is a nonprofit membership organization chartered in 1936 under the law of the state of New York to Provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Report*s, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

The Consumer Federation of America (CFA) is a federation of 300 nonprofit national, state and local organizations from throughout the nation with a combined membership exceeding 50 million people. CFA is an advocacy, research, education, and service organization that works to advance proconsumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. CFA investigates consumer issues, behavior, and attitudes using surveys, polling, focus groups, and literatures reviews. CFA disseminates information on consumer issues to the public and the media, as well as to policymakers and other public interest advocates.

Jointly and singly, the Texas Office of Public Utility Counsel, Consumers Union and the Consumer Federation of America have filed hundred of comments at the Federal Communications Commission (the Commission) on virtually all aspects of telecommunications policy.

THE CHALLENGE OF ACCESS CHARGE REFORM

The current system of intercarrier compensation has been described as "Byzantine" and broken by Commissioner Copps. We could not agree more. The system is Byzantine for many reasons; not least of which is because the millions of households who ultimately pay for intercarrier compensation don't know what it is, or how it impacts their telephone bills. Other than the subscriber line charge, network cost recovery mechanisms are not transparent to the customer. The system is broken because it fails to take into account technological change, enabling "arbitrage" that ultimately and unfairly burdens many consumers, especially low-use, lower income and consumers who cannot access or afford broadband technology.

Yet this “Byzantine” issue is poised to be resolved in a relatively straightforward manner—by dramatically increasing the monthly charges on plain old telephone bills through an increase in the subscriber line charge. This scheme amounts to requiring those “left behind” the move to broadband to bear all the network costs of the public switched telephone network (PSTN). Such a result is also contrary to universal service principles because rate increases could make it harder for some households to stay connected to narrowband, not to mention doing nothing to adapt universal service principles to the broadband world. Worse, the larger the increase in SLC paid by customers of the telephone network the greater the incentive for customers to abandon the PSTN for Voip or wireless, shifting yet more costs on to those left behind, further jeopardizing universal service. Obviously, the only intercarrier compensation regime hat is sustainable is one that spreads the network costs among all technological platforms.

THE NEED FOR A FRESH START IN ACCESS CHARGE REFORM

The record in this proceeding is in complete disarray. Launched in the hey day of hope that competition would eliminate the last mile market power of the incumbent local exchange carriers (ILECs), the initial round of comments were focused on an ill-considered proposal to flash cut to a bill and keep regime of intercarrier compensation. Having consumed the energy of the first two rounds of comments, that proposal has receded into an Appendix in this proceeding. The initial misstep deteriorated into a series of self-serving *ex parte* filings in which each of the commenters sought to stake out a claim that would protect their narrow interest at the expense of the public interest. This is not a Further Notice of Proposed Rulemaking (hereafter Notice or NPRM); it is a catalogue of disjointed private conversations between segments of the industry and the Commission.

The *ad hoc* nature of the *ex parte* process as it has played out in this proceeding undermines the Commission's ability to build an evidentiary record to support a rule. Each party presents a slice of data that is slanted to defend its interest and the Commission cannot combine the snapshots because common points of reference and consistent definitions are lacking. The Commission must make available a comprehensive set of data on customer billing patterns and industry revenue flows so that the impact of any access change reform proposals on the goals of the Communications Act can be fully and fairly judged.

To make matters worse, the Notice was launched prior to a fundamental shift in industry structure that deeply affects the issues at the core of the proceeding. The pending reintegration of local and long distance services with the mergers of the two largest regional Bell operating companies with the two largest non-Bell interexchange carriers (IXCs) fundamentally alters the economic structure of the industry. *Revestiture* restores all of the old, anticompetitive vertical incentives of the integrated Bell system. By market share, facilities deployed, and name recognitions, the size of the competitive segment in the industry, both competitive local exchange carriers (CLECs) and IXCs in comparison to the Bell incumbent local exchange companies (ILECs) has been shrunk to virtually nothing. The assumptions under which this rulemaking has meandered since 2001 have been rendered inapplicable and obsolete by this revestiture in the telecom marketplace. The Commission cannot count on competition to protect consumers of access services or competing service providers who must rely on vertically integrated monopolies for access to customers. More than ever, access charge reform requires the Commission to refocus on the twin goals of promoting competition and ensuring universal service.

The hype surrounding Voice Over Internet Protocol (VoIP) is just the latest in a long string of technologies that may or may not introduce effective competition into local telecommunications markets which would diminish incumbent market power. VoIP is not a substitute for access, however, since it requires an underlying last mile broadband technology. VoIP's competitive effect is limited because it of its resulting huge price tag, \$70 to \$80 per month, when monthly broadband access is included. The high price of VoIP also means it cannot further the goals of universal service.

In these initial comments, OPC, CFA, and CU seek to outline the policy framework in which the Commission must act to accomplish the goals of the Communications Act.

A Set Of Principles

The Cost Causer/User Pays Principle

Consumer advocates have always adhered to a fundamental principle in cost recovery. Users should only bear the responsibility for the network resources consumed in providing them service and should only bear a reasonable share of the joint and common costs used to complete a call. This user/beneficiary pays principle is consistent with a cost causer analysis and we believe that is both fair and efficient. Charges (or rates) such as the access charges in this proceeding should be set on competitive principles of long run marginal cost pricing. Rate structure should encourage universal service and reflect the intrinsic value attached to a network that maximizes subscribership.

We believe that these principles should continue to apply, but as networks change, it is important to recognize that costs may be incurred in different ways and the identity of the "user" may become problematic. In smart, digital networks, concepts of time and distance lose their relevance as proxies for costs. When a call arrives in a local area of the PSTN, the physical path to the called party may be unknown, because the system dynamically defines the path according to the available capacity. At lightening speed (literally in some sense the speed of light), a smart, digital, fiber optic network instantaneously finds the most efficient available route to complete the call.

Over the past decade, with the growth of wireless and Internet protocol telephone services, we have, to varying degrees, lost track of where a call came from, where the called party was in physical space, and how the call got there. At least that is what the wireless and Internet-based telephone service providers have said when it would give them a competitive or regulatory advantage. "Phantom traffic," whether the result of legitimate technological changes or gaming, now makes up a substantial part of the traffic on the network. In the decade ahead, this process of de-linking communications from specific physical facilities will progress and the opportunity for regulatory arbitrage will grow unless the FCC adjusts its approach to access charges.

At the same time, we have also changed, to a lesser extent, the simple calculation of who the user is. In the old days, it was relatively straightforward to classify the calling party as user and ascribe cost responsibility for the call to the user. The called party had no way to know who was calling when the phone rang, so etiquette and common sense required that the call be taken. Since the called party could terminate the call at any moment, acquiescence in the conversation indicated some benefit to the called party. Nevertheless, it made sense to attribute the cost to the caller since the called party did not have much control over the initiation of the conversation.

With the advent of "do not call lists," call blocking, and caller Id devices, that has changed somewhat, although we should not get carried away about how much control the called party actually has. To the extent that an increasing percentage of calls are from humans to machines that have been connected to the network for the purpose of receiving calls, it is reasonable to assume that the called party wants to receive the call. Notwithstanding, the calling party is benefited by having as broad a calling network as possible. This is one of the underpinnings of universal service. Shifting some or all of the cost responsibility for a call on to the called party could result in diminishing that network.

These changes in network design and function and human behavior made possible by technological progress do not mean we should abandon our user pays/cost causer principle, but that we need to think carefully about how the network is used and costs caused. The calling party still bears primary responsibility for the call.

Cost recovery that properly reflects cost causation in the current environment must shift to technologically neutral capacity and connection based charges. With packet switching replacing circuit switching, it is difficult to ascribe specific facilities to specific calls. The overall capacity of the network to complete calls is what matters. Capacity charges should fall on carriers, as access charges do today, which carriers can recover from their customers, as they do today.

INTERCARRIER COMPENSATION REFORM SHOULD NOT BE REVENUE NEUTRAL, BUT REFLECT DECLINING COSTS OF TECHNOLOGY

Access charge reform must not be a simple make whole proceeding. In recognizing that changing technologies may require a change in the manner in which access charges are collected to cover the costs of access, we should also recognize that the level of access costs are also affected. Changing network technologies and configurations have lowered and continue to dramatically lower network costs. Because competition in access is feeble, these costs savings will not be passed through to consumers unless the Commission takes action to lower the prescribed level of access charges.

The FCC must reflect these declining costs in access charges. Current subscriber line charges already exceed forward looking economic costs of access allocated to the Federal jurisdiction. The subscriber line charge should be lowered, not increased.

Declining switching costs should also be reflected in a reduction in the level of access charges. It is absurd for the incumbent local exchange carriers to claim to be moving to IP-based switching in pursuit of cost savings, and then fail to reflect those costs savings in access charges paid by customers.

The Market Will Not Support Bill and Keep

It might be possible to argue that bill and keep is appropriate for a world where market power is controlled and reasonable rules of interconnection are adhered to. In such a world, bill and keep might save on transaction costs and close loopholes for arbitrage opportunities. Under a regulated monopoly, rate regulation ensures a "reasonable" allocation of costs and benefits, so bill and keep would do little harm. In a competitive market, market forces would prevent the abuse of market power so that allowing access costs to be recovered from one's own customers could be efficient. Unfortunately, we do not live in such a world.

Market power still exists in access markets for residential customers, while regulation is being relaxed. Under these conditions, bill and keep will lead to the abuse of consumers because it will result in large increases in end user rates, especially in rural areas. Because bill and keep would increase the rate disparity between urban and rural, that method of cost recovery is counter to Sec. 254 requirements that rural and urban rates be "reasonably comparable." Bill and keep approaches to network cost recovery also do not reflect cost causation because bill and keep amounts to setting termination charges at zero which clearly ignores that there is some cost to the calling party's chosen IXC and LEC.

ILECs still account for the vast majority of residential access customers. The dominant ILECs are in the process of also becoming the dominant IXCs. The anticompetitive, anti-consumer incentives that prevailed in the old vertically integrated Bell system are being recreated through merger and elimination of UNE-P as a platform for local competition. Hopes for future cross-platform competition are just that, hopes, which do not have the ability to discipline the abuse of market power in the present.

Thus, we believe that the economically efficient approach to access charge reform must lower access charges substantially to reflect declining costs and recover those costs on a capacity/connections basis.

COMPARABILITY AND UNIVERSAL SERVICE

At the same time, it must be recognized that the telecommunications policy articulated in the Telecommunications Act of 1996 is not strictly driven by competition and economic efficiency considerations. The Act embraces explicit and clear universal service and equity goals. It compels the Commission to ensure that "reasonably comparable services" are available at "reasonably comparable rates" across a broad range of conditions "including low-income consumers and those in rural, insular, and high cost areas." To the extent that the Commission believes subsidies are embedded in access charges, it must find ways, or allow states to find ways, to meet the universal service and comparability goals of statute.

Fees that preserve universal service and rate comparability can be collected in access charges, as long as they are properly labeled and competitively and technology neutral. They should fall on carriers, not consumers. This is consistent with the Commission obligation to ensure that "all telecommunications service providers should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." The Commission must ensure that all telecommunications service providers make a full and fair contribution, "regardless of the technology used." If the Commission attends carefully to the cost reduction flowing from new technologies and includes all telecommunications service in the universe of services, it will go a long way to easing the transition to a rational and equitable access charge regime.